HO BOON THONG

v.

PUBLIC PROSECUTOR

HIGH COURT, SINGAPORE
M KARTHIGESU J
[MAGISTRATE'S APPEAL NO. 78/91/01]
24 JULY 1991

CRIMINAL PROCEDURE: *Juveniles - Relevant date to determine jurisdiction - Definition of 'young person' - Date of commission of the alleged offence - Meaning of 'heard' - Children and Young Persons Act [Sing], ss. 42, 48, 55(1), 58(1).*

The appellant was born on 21 June 1972 and was charged with an offence under s. 326 of the Penal Code which he is alleged to have committed when he was below 16 years old. On the date that he was formally charged in the Juvenile Court he was still under 16 years.

However when the case finally came up for trial, the appellant was over 16 years old and the presiding Magistrate ruled that the Juvenile Court had no jurisdiction to hear the case and transferred it to the District Court. However, the District Court ruled that the Juvenile Court had jurisdiction to hear the case and transferred it to the Juvenile Court.

The presiding Magistrate in the Juvenile Court ruled that this Court did not have jurisdiction and transferred it out of the Juvenile Court to be heard by another Court. This is the appeal against that order, the issue before the Court was what was the relevant date for determination of the Court's jurisdiction.

Held:

[1] The jurisdiction of the Juvenile Court is determined by the one and only relevant fact of the age of the offender at the time of the commission of the offence and no other. This view is fortified by ss. 55(1) & 58(1) of the Children and Young Persons Act.

[Appeal allowed; order of Magistrate set aside; case to be tried in the Juvenile Court.]

Cases referred to:
Re Green 51 LJ QB 25 ***(cit)***
Re Daley [1982] 2 All ER 974 ***(cons)***

Legislation referred to:
Children and Young Persons Act [Sing], ss. 42, 48, 55(1), 58(1), 59, 60, 105, 106
Penal Code [Sing], s. 326

For the appellant - Govind
For the public prosecutor - Chua Eng Hui

JUDGMENT

M Karthigesu J:

This case is not without its difficulties whichever of the views expressed either by Mr. Govind for the appellant or by Mr. Chua for the public prosecutor are accepted as being correct. Despite anomalous situations that can arise in some extreme cases in either of the two views, I apprehend that the view that I am about to express is the correct one.

The appellant was born on 21 June 1972. He was charged with an offence under s. 326 of the Penal Code, an offence of voluntarily causing grievous hurt, alleged to have been committed on 6 November 1987, that is to say when he was just short of 15 years and 5 months old. He was duly taken before the Juvenile Court on 8 December 1987 and formally charged with the offence to which he claimed trial. On the date he was formally charged in the Juvenile Court and claimed trial he was still under 16 years of age.

For one reason or another, which is not material to the question I have to decide, the charge against the appellant was neither tried in the Juvenile Court nor in any other Court of summary jurisdiction. Suffice it to say that when both the prosecution and the appellant were ready for trial, around October 1988 the appellant was already over the age of 16 years, having reached that age on 21 June 1988, but as the presiding Magistrate in the Juvenile Court at that time was of the view that the Juvenile Court would not have jurisdiction to try an accused who was over the age of 16 transferred the case to a District Court where the case was fixed for hearing on 23 and 24 February 1989.

Again for reasons which are not material the District Court did not hear the case until 3 June 1989 on which date after hearing submissions on the question of jurisdiction the District Judge ruled that the Juvenile Court had the jurisdiction to hear this case and ordered that it be transferred to that Court.

Once again there was delay, and once again the reasons for the delay are not material. Not until 2 August 1990 were dates for hearing given in the Juvenile Court. The hearing dates were 6th to 8th March 1991 and 13 and 14 March 1991. However the presiding Magistrate in the Juvenile Court, not the same one as before, had the case brought forward to 1 March 1991 and informed both the prosecuting officer and defence Counsel that notwithstanding the earlier ruling of the District Court, against which the prosecution had not appealed, and which the presiding Magistrate felt was not binding on him, he would require argument on 6 March as to whether the Juvenile Court could continue to exercise jurisdiction over the appellant who had now reached the age of 18 years.

On 6 March 1991 defence Counsel submitted to the Juvenile Court that he stood by the written submission he had made to the District Court and to the High Court. The reference to the High Court relates to Criminal Revision No. 4 of 1989 being a petition by the appellant to the High Court on 11 March 1989 when this case was first transferred out of the Juvenile Court to the District Court, to set aside that order or for an order that this case be tried in the Juvenile Court. The High Court had not ruled on the appellant's petition but had directed that the question of the jurisdiction of the Juvenile Court be dealt with by the District Court and the District Court had dealt with the matter by ruling that the Juvenile Court had jurisdiction and had transferred the case back to the Juvenile Court for hearing. I have already dealt with this earlier.

The presiding Magistrate in the Juvenile Court then ruled that the Juvenile Court did not have the jurisdiction to try this case and accordingly transferred it out of the Juvenile Court to be heard by another Court. It is against that order that this appeal is brought.

The section dealing with the jurisdiction of the Juvenile Court is s. 48 of the Children and Young Persons Act (Cap. 38) hereafter called "The Act". It reads:

> (1) Subject as hereinafter provided, no charge against a child or young person shall be heard by a Court of summary jurisdiction which is not a Juvenile Court:

Provided that:

(a) where a child or young person is charged with an offence or offences triable only by the High Court, he shall be tried by the High Court;

(b) a charge made jointly against a child or young person and a person who has attained the age of 16 years shall be heard by a Court of appropriate jurisdiction other than a Juvenile Court; or

(c) where in the course of any proceedings before any Court of appropriate jurisdiction other than a Juvenile Court, it appears that the person to whom the proceedings relate is a child or young person, nothing in this section shall be construed as preventing the Court, if it thinks fit to do so, from proceeding with the hearing and determination of the proceedings.

2) A Juvenile Court shall have jurisdiction to try all offences which, but for subsection (1), would be triable only in a Magistrate's Court or a District Court.

"Young Person" is defined by s. 42 of the Act and reads:

"young person" means a person who, in the absence of legal proof to the contrary, is, in the opinion of the Court having cognisance of any case in relation to such person, 14 years of age or upwards and under the age of 16 years.

Neither the definition of "young person" nor s. 42 itself makes it clear whether for the purposes of determining jurisdiction the age at the time when the offence is committed is to be the deciding factor. The form of words used in the section is a double negative. The intent of the section stated in positive terms is that a charge against a young person will be heard in a Juvenile Court. The word "heard" has been judicially defined to mean "heard and finally disposed of". See *Re Green* 51 LJ QB 25 per Lord Selborne at pp. 39/40 and per Lord Blackburn at p. 44. Thus what the section does make clear is that a charge against a young person must be heard and finally disposed of in the Juvenile Court.

The only date which can be determined with any degree of certainty is the date on which an offence is committed for when the offender will be apprehended, when he will be charged, when that charge will be heard and finally disposed of are subject to many seen and unforeseen factors. The Legislature could not have intended that the jurisdiction of a Juvenile Court is to be founded on the determination of the age of the offender by reference to some indeterminate date as would be the case if the age of the offender for the purposes of determining the jurisdiction of the Juvenile Court is to be based on the date of apprehension, or the date when he is charged with the offence or the date when the hearing of the charge commences in Court or the date when the hearing is concluded and he is convicted and sentenced, or any other date other than the date when the offence itself was committed. See the opinion of Lord Diplock in *Re Daley* [1982] 2 All ER 974 at 978/979. Thus it seems reasonably clear to me that in order to determine the jurisdiction of the Juvenile Court the one and only one relevant fact that has to be considered is the age of the offender at the time of the commission of the offence and no other.

I am fortified in the conclusion I have reached by the provisions of the Act, particularly s. 58(1) where the phrase "at the date of the commission of the alleged offence" is used. I emphasize the word "commission" in that phrase. Section 58(1) of the Act reads:

(1) Where, in a charge for an offence triable under this Act, it is alleged that the person by whom the offence was committed was under or had attained any specified age, and he appears to the Court to have been at the date of the commission of the alleged offence under or to have attained the specified age, as the case may be, he shall for the purposes

> of this Act be presumed at that date to have been under or to have attained that age, as the case may be, and any order made therein shall not be invalidated by any subsequent proof that the age has been incorrectly stated.

No doubt the subsection raises the presumption that the age of the offender alleged in the charge shall be taken to be the age of the offender even if it should subsequently be proved that the age has been wrongly stated and that thereby the proceedings shall not be invalidated but the crucial effect of this subsection in my view is that the age that is to be considered is the age "at the date of the commission (and here again I emphasize the word "commission") of the alleged offence". This to my mind is as clear an indication as any of the legislative intent, that it is the age of the offender at the date of the commission of the alleged offence and no other that shall determine the jurisdiction of the Juvenile Court.

I find further support for the conclusion I have reached in s. 55(1) of the Act which provides that any Court before which a child or young person is found guilty of an offence shall have the power to remit the case to the Juvenile Court and when so remitted the Juvenile Court may deal with him in any manner in which he might have been dealt with if he had been tried and found guilty in that Court. This subsection again clearly indicates that the relevant age is the age at the time of the commission of the offence.

Sections 59, 60, 105 and 106 of the Act which I do not propose to deal with but mention only in passing also lend weight to the conclusion I have reached. I will also note that Kan Ting Chiu JC had occasion recently to consider the same question but in another context in Criminal Case No. 5 of 1990. In that case Kan Ting Chiu JC was considering the matter from the sentencing aspect of a young person who was tried with an adult of an offence under the Misuse of Drugs Act. In his grounds of decision delivered on 12 July 1991 he came to the same conclusion as I have. I respectfully agree with him.

As I said in the beginning in this judgment whatever or whichever view that has been canvassed before this Court is accepted we are bound with having to face up with anomalous situations but I feel that the view that I have expressed in this judgment is the correct view. I would therefore allow this appeal.

I set aside the order of the Magistrate and direct that this case be tried in the Juvenile Court.

Also found at [1991] 3 CLJ 2296